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Managing Partner Greg T. Rinckey, Esq. talks about the twists in the Morse case with Stars and Stripes

Army stops Morse defense investigation, then backs off

By Chris Carroll

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WASHINGTON — The Army last month temporarily forced its former top sexual assault prosecutor, removed from his job in February after a female colleague said he groped her in 2011, to stop his attorneys from investigating the developing case while the Army proceeded with its own investigation. According to documents filed in court, the April 3 cease-and-desist order prevented Lt. Col. Jay Morse, former chief of the Trial Counsel Assistance Program, as well as his defense counsel, from speaking to any potential witness. Several military legal experts told Stars and Stripes they'd never seen an order like it before. The order was rescinded later in April after Morse and his attorneys protested, saying that it essentially stripped him of the right to be represented by counsel. Army officials, however, said the order was dropped on April 18 because the Army Criminal Investigative Command completed its investigation that day. Morse has not been charged with a crime. The documents, filed in the Army Court of Criminal Appeals, were first reported on the National Institute of Military Justice's CAAFlog blog. According to the order by Lt. Col. Mark R. Bieh, a battalion commander in the Army Military District of Washington, "you will not discuss any facet of this case with any witness or potential witness in the case, nor will you conduct any interviews of potential witnesses until CID has completed its investigation. This prohibition also applies to any and all third parties, agents, proxies, or attorneys ..." The order

followed a complaint from the alleged victim after she found out Morse's counsel had contacted potential witnesses, Biehl wrote in another memo to Morse that appeared on CAAFlog. Col. Josslyn Aberle, a spokeswoman for the Military District of Washington, said the order was based on a 2013 ALARACT — an all-Army message from top brass — instructing Army commanders not to conduct concurrent sexual assault investigations with CID. The Army decided the policy could also be used to limit defense actions, she said, and ordered Morse and his counsel to back off until CID finished up. CID represents neither the prosecution nor the defense, she said. "Particularly with these cases, we want to make sure that it is the least traumatic for all parties involved as possible, and it's a thorough investigation conducted by authorities who are trained to do these investigations to ensure justice is served for all parties," she said. The situation is a reflection of the chaotic state surrounding the military's handling of sexual assault, military legal experts said. Reports of sexual assault have been rising, with the Pentagon this week reporting a 50 percent rise in reports of sexual assault and misconduct from the previous year. Statements from military brass and even President Barack Obama about the need to vigorously prosecute sexual offenses have become an issue in prosecutions, with defense attorneys arguing it unfairly stacks the deck against defendants. The order to Morse helps create the impression of a "witch hunt" against anyone accused of sexual wrongdoing, said Greg Rinckey, a former Army judge advocate whose firm, Tully Rinckey, represents military defendants. "It almost appears they're attempting to inhibit his ability to put on a defense," he said. "Essentially they're saying we want to talk to everyone and get their stories locked in, and then you can go talk to them." Orders of no contact between defendants and specific witnesses are not uncommon, particularly if there had been intimidation or harassment, Rinckey said. But he said he'd never heard of a blanket ban covering even attorneys when no such complaints had been lodged. Eugene R. Fidell, who teaches military law at Yale University and is former president of the National Institute of Military Justice, said he couldn't conceive of a legitimate reason to prevent a defense attorney from investigating allegations. "The episode has caused a great deal of consternation among military lawyers, who are trying to figure out how this happened and what it means more broadly," he said. Fidell said he's glad the order was withdrawn but would have liked to have seen it knocked down by a military judge. "In the

absence of a court order, nothing really prevents it from happening again," he said. Fidell recommended the Army Judge Advocate General issue a statement reaffirming "that the accused in the military justice system continue to have full rights to defend themselves."